IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (BAIL) NO. 41 OF 2007

SHRI. SUNIL THUKRAL AT PRESENT
LODGED IN JUDICIAL CUSTODY,
MAPUSA, GOA. ... Appellant

Versus

STATE THROUGH P.I. ATTACHED TO
CALANGUTE POLICE STATION ... Respondent

Mr. M. Teles, Advocate with Mr. G. Teles, Advocate for the Appellant.
Ms. Winnie Coutinho, Public Prosecutor for the State.

Coram:- N. A. BRITTO, J.

Date:- 29th March, 2007

ORAL ORDER

Heard Shri Teles, the learned Advocate on behalf of the applicant and Ms. Coutinho, the Public Prosecutor on behalf of the respondent.

2. The applicant herein is accused no.1 in Sessions Case no.25/06, which has been filed against him along with one Anant Yeshwant Volvoikar, as accused no.2, under Section 302, 120(b) I.P.C. and Sections 3 read with Section 25, 27 of the Arms Act, 1958, with the allegation that the applicant/A1 along with the said Anant Yeshwant Volvoikar/A2 and Ashpak Bengre, who was absconding and who has now been arrested on 13.03.2007, by Chembur Police Station, Mumbai, entered into a criminal conspiracy to cause the death of Pravin Grover and Ashpak Bengre/A3, was hired as a contract killer and who shot dead the deceased Pravin Grover on 11.07.2006.

3. The applicant/A1 is a cousin of the deceased Pravin Grover. The applicant/A1, Anant Yeshwant Volvoikar/A2 and the deceased Pravin Grover were the Directors of Candolim Developers Private Limited, who

owned Perola Do Mar Resort situated at Candolim. On 11.07.2006, at about 18.45 hours, the said Pravin Grover was shot dead at the said resort and a complaint came to be lodged of the said incident, by one Raviraj Prabhu.

4. The applicant/A1 applied for bail to the Court of Sessions but his application came to be rejected by Order dated 04.11.2006, and therefore, has now approached this Court for bail. The applicant/A1 and the said Anant Yeshwant Volvoikar/A2, have been strongly suspected by the family members of the deceased as the persons behind the murder having committed the same by engaging a contract killer, namely the said Ashpak Bengre/A3. There is no dispute that the postmortem report of the deceased confirms that the death of the deceased Pravin Grover was due to haemorrhagic shock as a result of fire arm injuries.

5. There appear to have been disputes and differences amongst the above said three Directors in connection with the running of the Perola Do Mar Resort, Candolim, as stated by the widow of the deceased. There were disputes between the deceased Pravin Grover and the applicant/A1 as well as Anant Yeshwant Volvoikar/A2, over the said Resort and Civil and Criminal cases were pending in various Courts. As can be seen from the statement of the said widow Smt. Amita Grover, there were three cases pending in the Court regarding the dispute over the Resort and the applicant/A1 was threatening the deceased that he would show him and Anant Yeshwant Volvoikar/A2, who was accompanying him, and, her deceased husband, had filed cases against the said two accused and it appears that at one stage, on 04.06.2005, the applicant/A1 had obtained possession of the said Resort by virtue of interim order from the Civil Court and, thereafter, by virtue of the Order of this Court, the deceased had obtained possession of the said Resort. It also appears that there were three incidents taken place at Panaji, Miramar and Candolim, in which deceased was sought to be attacked and, according to Smt. Amita Grover,

it is the applicant/A1, who attacked her husband through goondas and regarding which there were cases pending and the details of which can be found in Para 8 of the reply filed, dated 07.03.2007.

6. The learned Sessions Judge has denied bail to the accused observing that the statements of the widow, the children and the father of the deceased, prima facie, indicated that the accused was consistently threatening to cause death of the deceased and his family members and, therefore, there was prima facie material to raise a strong suspicion that the applicant/A1 had a motive to commit that offence and he was involved in committing the offence. The learned Sessions Judge has also observed that in the year 2001, there was an attempt by an unknown person to cause death of the deceased Pravin Grover by means of a firearm and, in that regard, the deceased had complained that he had suspected that the accused had engaged some unknown person to kill him. The learned Sessions Judge has also observed that the statement of Pushpa and Atmaram Gadekar and Sanjay indicated that the accused(A1) had engaged Ashpak Bengre as a contract killer to cause the death of Pravin Grover and the statement of Francis Viegas also, prima facie, indicated that in July 2005, he was engaged as a security guard and that during first two-three months, there was an argument between the accused(A1) and the deceased in his presence and that the accused(A1) had threatened the deceased of dire consequences and that the deceased had also lodged complaints against the accused in July 2005, stating that the accused had engaged goondas and that he was threatened to cause his death.

7. The statement of one of the employees of the said Resort namely Pushpa Gadekar shows that she was employed by the applicant/A1 in the said Resort and during the discussions the applicant/A1 had told her in the presence of Rama Salgaonkar that he had given a contract to Ashpak Bengre/A3 to kill the deceased and that the said Rama Salgaonkar would follow up the case and had kept Rs.10,000/- in her car to be given to

Ashpak Bengre, whenever he demanded the same and the contract amount of Rs.5,00,000/-, had to be given after the work was executed and that the said Rama Salgaonkar had paid him the said sum of Rs.10,000/- when Ashpak Bengre was leaving for Mumbai and that she was present when the said amount was paid. Her statement also shows that in November, 2001, the said Ashpak Bengre had informed them that he had killed the deceased and had demanded Rs.5,00,000/- from Rama Salgaonkar and assaulted and threatened him, and out of fear, she had paid a sum of Rs.25,000/- to him and thereafter they went to meet one Mr. Pillay who was a Supervisor of the applicant/A1 and the latter told them that the applicant/A1 was insisting for proof of murder by way of a finger of the deceased.

8. Learned Counsel on behalf of the applicant/A1 submits that the incident narrated by the said employee Ms. Pushpa Gadekar is of the year 2001 and the same has no connection with the death of the deceased which took place on 10.07.2006. Learned Counsel further submits that except for suspicion expressed by the family members of the deceased, there is no other material collected by the police to show the involvement of the applicant/A1 in the murder of the deceased, which took place on 10.07.2006. Learned Counsel further submits that the statement of the said Pushpa Gadekar is contrary to the statement of Rama Salgaonkar, who himself has suspected the hand of the said Smt. Pushpa Gadekar in the murder of the deceased. It is also submitted that the payment of Rs.10,000/- stated to have been made by Rama Salgaonkar to Ashpak Bengre/A3, has not been supported by the said Rama Salgaonkar, in his own statement.

9. On the other hand, it has been submitted by the learned Public Prosecutor that the statement recorded of the applicant/A1 shows that Rs.1,00,000/- was paid by the applicant/A1 to Ashpak Bengre.

10. Although the chargesheet against the applicant/A1 and the said Volvoikar/A2 was filed on 07.10.2006, being C.C. no. 174/S/06/A, the applicant/A1 was sent for polygraph and brain fingerprinting test only after 27.11.2006 and it is stated on behalf of the respondent that the report of the said test is still awaited. This attitude does not speak very highly of the respondent.

11. The statement of the applicant/A1 that he had paid Rs.1,00,000/- is entirely in different context and it cannot be said that the said sum of Rs.1,00,000/- was paid to Ashpak Bengre/A3 to murder the deceased. That apart, it is not known since when a statement recorded of the accused could be used against him to deny bail to him. The prohibition contained in Sections 25 and 26 of the Indian Evidence Act, 1872, will come in the way of making the use of such statements, even to deny bail to the accused.

12. The statement of the said Smt. Pushpa Gadekar directly implicates the applicant/A1 as the person behind the plan to murder the deceased and although the said plan was not executed in the year 2001, there is nothing on record to suggest that the relations between the deceased on one hand and the applicant/A1 had improved or become normal, but on the other hand, the record shows that the enmity between them continued even in July, 2005, and considering the facts of the case, it certainly could be inferred at this stage, that the plan for which money was received and which was not executed in the year 2001, was executed on 10.07.2006, and for that reason, the family members of the deceased had strongly suspected the applicant/A1 in the commission of the said offence. This is not the stage to go into the probative value of the statements made whether of the said Smt. Gadekar or for that matter of Rama Salgaonkar. The material on record shows that the applicant/A1 is, prima facie, involved in a grave offence of murder, punishment for which would be severe. In such a situation, the Court is bound to presume that

no amount of bail would secure the presence of the applicant/A1 at the trial.

13. Hence, this is not a fit case to admit the applicant/A1 to bail. Application, therefore, is hereby rejected.

N. A. BRITTO, J.

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